

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

CARSON CITY FIREFIGHTERS ASSOCIATION,)	
)	
Petitioner,)	
)	No. Al-045285
vs.)	
)	
CARSON CITY BOARD OF SUPERVISORS:)	
GEORGE GOTTSCHALK, JOHN HAYES, EUGENE)	
M. SCRIVNER, JOE BENSINGER, and)	
THELMA CALHOUN,)	
)	
Respondents.)	

DECISION

Employing the power vested in him by NRS 288.200(7), Governor Mike O'Callaghan ordered the parties to binding factfinding on the issue of salaries on March 31, 1974. They selected Professor Howard Durham as their factfinder and appeared before him for a hearing on May 17, 1974. Professor Durham submitted his award to the parties on June 26, 1974; the binding portion of the award upgraded the positions of fireman, engineer, captain and battalion chief on the salary schedule of the City.

The following month, July, 1974, the City granted to all other employees a general salary increase of 9.1%; 5% was deemed a "cost-of-living" increase and 4.1% was called a "parity pay increase." When the City refused to grant this 9.1% raise to the firefighters, in addition to the upgradings, the petitioner requested a clarification from Professor Durham concerning the right of the petitioner's membership to the general salary increase. On August 6, 1974, Professor Durham directed a letter to the petitioner's President, Mr. Mike Holton, stating that the award was intended to be in addition to any cost-of-living increase granted to the other employees of the City.

The petitioner subsequently filed in the First Judicial District Court in Carson City to enforce the award, and, the Court requested a second clarification from Professor Durham.

On February 10, 1975, Professor Durham sent his response to The Honorable Frank Gregory, Judge of the First Judicial District Court, wherein he set forth the following clarification of his award:

Although the City did not refer to any form of salary increase other than a cost of living increase at any time during the hearing, I felt that by upgrading the positions of the firefighters as I did, they would receive the percentage (sic) increases requested in addition to any across-the-board increase granted other City employees. This was the intent of my award.

Having assumed jurisdiction over the factfinding award pursuant to the Uniform Arbitration Act (NRS Ch. 38), Judge Gregory ruled on February 24, 1975: "...the Arbitration Award of June 26, 1974, between the parties is clarified to read that the percentage increases awarded to members of the Association shall be in addition to any across-the-board increase granted other City employees."

This Order has been appealed to the Nevada Supreme Court and it is our understanding that the thrust of the appeal is that the District Court had no jurisdiction over the binding factfinding proceeding under the Uniform Arbitration Act.

The record reflects that the City has granted the firefighters the classification upgradings and the 5% "cost-of-living" increase but has refused to give them the 4.1% increase. Respondents assert that the factfinder was without jurisdiction to modify his award, and, that the 4.1% "parity" increase was awarded the other employees of the City as the result of collective bargaining and is therefore not an "across-the-board" increase.

Neither party questions our jurisdiction over this matter. NRS 288.110(2) vests us with the jurisdiction to hear and determine any complaint arising out of the interpretation of or performance under the provisions of Chapter 288 of the Nevada Revised Statutes. NRS 288.270(1)(e) makes it a prohibited practice for a local government employer or its representative to refuse to bargain collectively in good faith. Bargaining collectively is defined as the entire bargaining process, including factfinding. The instant petition is predicated upon this provision.

The only constraints on a binding factfinder acting pursuant to NRS 288.200 are set forth in section eight of that statute. Neither party has urged that Professor Durham did not comply with these requirements. There is no provision of Chapter 288 which would indicate that a binding factfinder may not subsequently clarify his award for the parties or a court of law. The initial clarification was subsequently agreed to by the parties as evidenced by a stipulation filed in the First Judicial District Court on January 23, 1975. The second clarification was, as indicated previously, requested by the Court.

Respondents' first assertion is that the second clarification was not a clarification at all, but, rather a modification of the initial award and beyond the factfinder's jurisdiction.

Although the Nevada Supreme Court has never been called upon to rule on a factfinding proceeding pursuant to NRS 288.200, they have found that under the Uniform Arbitration Act an arbitrator possesses very broad authority. Northwestern Security Insurance Company v. Clark, 84 Nev. 716, 448 P.2d 39 (1968).

The United States Supreme Court has held on numerous occasions that arbitration statutes are to be broadly construed as they are intended to alleviate labor disputes. See, for example, Boys Markets, Inc. v. Retail Clerk's Union, Local 770, 398 U.S. 235 (1970).

Since the purpose of arbitration statutes (or in our case a "fact-finding" statute) is to expeditiously resolve disputes without the necessity of lengthy litigation, courts generally have recognized that they possess the authority to remit a labor arbitration award to the arbitrator for any necessary clarification. See collected authority, Arbitration-Resubmission by Court, 37 ALR 3d 200, §7.

Factfinder Durham discussed the raise being considered for all employees of the City, but, his initial award was unclear on the point of whether or not the firefighters should receive any such raise, and, if so, to what extent. It was appropriate for the Court to seek a final clarification of the award so it could be promptly implemented.

We turn to the question of whether or not the 4.1% "parity" raise was an "across-the-board" increase and therefore within the statement in the second clarification that the firefighters are entitled to the upgrading and "any across the board increase granted other employees."

A raise given employees may be given any number of different name tags. However, we believe that the name is not important, rather, the effect of the raise is determinative. If a salary increase is given to all employees and the percentage each receives is the same it would seem to be an across-the-board raise no matter what it may be designated. Since the record reflects that the other employees of the City received a 4.1% increase each, that is an across-the-board increase despite its designation as a "party" raise.

As we alluded to previously, the purpose of the procedures set forth in NRS 288.200 is to provide a finality to collective bargaining so it will not go on ad infinitum. If a party against whom an award is made feels it is not legally supportable they should institute appropriate legal action; if the award is unclear, they should attempt to gain an agreement with the other party to seek a clarification. The respondents did neither. Although they were within their rights to appeal Judge Gregory's Order, their conduct in delaying implementation of the award and forcing the petitioner to institute suit before the First Judicial District Court and petition this Board clearly shows a failure to act in good faith in the entire bargaining process, including factfinding. NRS 288.270(1)(e).

FINDINGS OF FACT

1. That the petitioner, Carson City Firefighters Association, is a local government employee organization recognized by the respondents as the exclusive bargaining agent for the firemen, engineers, captains and battalion chiefs in the Carson City Fire Department.

2. That the respondents constitute the governing body of the consolidated municipality of Carson City, a local government employer.

3. That on March 31, 1974, Governor Mike O'Callaghan ordered the petitioner and respondents to binding factfinding on the issue of salaries pursuant to his authority under NRS 288.200(7).

4. That pursuant to the procedures set forth in NRS 288.200 the parties selected Professor Howard Durham as their factfinder.
5. That the parties appeared for a hearing before Professor Durham on May 17, 1974.
6. That on June 26, 1974, Professor Durham submitted his award which upgraded the positions of fireman, engineer, captain and battalion chief on the salary schedule of the City of Carson City.
7. That in July, 1974, the respondents granted all other employees of the City a general salary increase of 9.1%.
8. That 5% of the salary increase was designated a "cost-of-living" increase.
9. That 4.1% of the salary increase was designated a "parity pay increase."
10. That the petitioner's President, Mr. Mike Holton, directed a letter to Professor Durham on July 16, 1974, requesting a clarification of the award.
11. That on August 16, 1974, Professor Durham responded to the request stating that his award was intended to be in addition to any cost-of-living increase granted other City employees.
12. That the petitioner filed suit in the First Judicial District Court to enforce the factfinder's award.
13. That during the pendency of that litigation the parties stipulated that the Court could consider the clarification of August 6, 1974.
14. That at the direction of the Court, a second clarification was requested on January 30, 1975.
15. That Professor Durham's response of February 10, 1975, stated that the firefighters were entitled to the upgrading and "any across the board increase granted other City employees."
16. That The Honorable Frank Gregory of the First Judicial District Court ruled on February 24, 1975, that the award of Professor Durham be "clarified to read that the percentage increases awarded to members of the Association shall be in addition to any across-the-board increase granted other City employees."

17. That the Order of Judge Gregory is presently on appeal to the Nevada Supreme Court.

18. That the respondents have implimented the upgrading set forth in the award of Professor Durham and have granted the firefighters the 5% cost-of-living raise, but, have refused to give them the 4.1% increase.

CONCLUSIONS OF LAW

1. That under the provisions of Chapter 288 of the Nevada Revised Statutes the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of this petition.

2. That the petitioner, Carson City Firefighters Association, is a local government employee organization within the term as defined in NRS 288.040 as amended by Stats. of Nev., 1975, ch. 539, §12, pps._____.

3. That the respondents constitute the governing body of the consolidated municipality of Carson City, a local government employer within the term as defined in NRS 288.050.

4. That the parties proceeded through the binding factfinding procedures as provided for in NRS 288.200.

5. That the factfinder's award was unclear and that both clarifications of the award were legally permissible and did not constitute a modification of the initial award.

6. That the clarifications were not improper or in violation of any provision of NRS Chapter 288.

7. That the 4.1% increase which the respondents designated a "parity pay increase" is an across-the-board increase of general applicability and, as set forth in the second clarification, is to be given to the firefighters.

8. That the conduct of the respondents constitutes a refusal to bargain collectively in good faith and is in violation of NRS 288.270(1)(e).

Unless implimentation of the 4.1% raise has been stayed or is stayed by appropriate judicial authority, the respondents are directed to pay to each

member of the bargaining unit this 4.1% pay increase retroactive to July 1, 1974.

The parties shall proceed in conformity with this decision.

Dated this 18th day of July , 1975.


John T. Gojack, Board Vice Chairman


Dorothy Eisenberg, Board Member